

# **IDAPA 11 – IDAHO STATE POLICE**

## **11.03.01 - RULES GOVERNING ALCOHOL TESTING**

**DOCKET NO. 11-0301-1401**

### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 2, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-2901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule adds current standard operating procedures published by Idaho State Police Forensic Services (ISPFS) for alcohol analysis and breath testing to administrative rule. These rules have previously been part of the standard operating procedure documents published by ISPFS for use in court testimony.

The following procedures will be added to administrative rule:

- Breath alcohol instrument training requirements for operators and specialists;
- Breath alcohol instrument performance verification and calibration requirements and rules;
- Breath alcohol testing requirements and procedures;
- Alcohol laboratory approval and operational standards;
- Minor in possession/minor in consumption (MIP/MIC) testing methods; and
- Passive testing procedures.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The need for the temporary rule change is due to ongoing criminal cases and appeals in the Idaho judicial system to suppress blood alcohol results based on the current process of having the rules governing breath alcohol testing in ISP Forensic Services' Standard Operating Procedure (SOP) rather than administrative rule. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a significant public safety threat.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is no change to the process for alcohol testing, the change is merely adding the current standard operation procedure to administrative rule.

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**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Matthew Gamette, Director of Forensic Services at (208) 884-7217.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29<sup>th</sup> day of August, 2014.

Colonel Ralph W. Powell, Director  
Idaho State Police  
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(208) 884-7003/(208) 884-7090

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